

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 18, 2002

IN RE:

**DOCKET TO DETERMINE THE COMPLIANCE
OF BELL SOUTH TELECOMMUNICATIONS,
INC.'S OPERATIONS SUPPORT SYSTEMS
WITH STATE AND FEDERAL REGULATIONS**

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**DOCKET NO.
01-00362**

**FINAL ORDER APPROVING SETTLEMENT AGREEMENT AND
ADMINISTRATIVELY CLOSING DOCKET**

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Ron Jones, of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this docket, during a regularly scheduled Authority Conference that was continued from August 5 to August 7, 2002, for consideration of certain terms of the Settlement Agreement entered into by the parties in TRA Docket No. 97-00309, *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996* ("Docket No. 97-00309" or the "271 docket").

Background

On April 26, 2002, BellSouth Telecommunications, Inc. ("BellSouth") submitted its third Section 271 filing to the Authority in TRA Docket No. 97-00309.¹ On May 8, 2002, Director Melvin Malone, serving as Pre-Hearing Officer, issued a Notice

¹ See 47 U.S.C. § 271.

establishing a procedural schedule in TRA Docket No. 97-00309.² The parties proceeded with discovery pursuant to that Notice. On May 23, 2002, Pre-Hearing Officer Malone issued another Notice directing the parties to reserve August 5-9, 2002 for the Hearing in TRA Docket No. 97-00309.

At a regularly scheduled Authority Conference held on July 23, 2002, the panel of Directors presiding over TRA Docket No. 97-00309 voted unanimously to appoint Director Deborah Taylor Tate to act as Pre-Hearing Officer to prepare the docket for a hearing. A Pre-Hearing Conference was held on July 30, 2002. At the suggestion of the Pre-Hearing Officer, the parties initiated settlement negotiations. On July 30, 2002, the Pre-Hearing Officer issued a Notice informing the parties that the Hearing on the Merits in TRA Docket No. 97-00309 would commence on August 6, 2002. Just prior to the Hearing, a Pre-Hearing Conference was convened to discuss the progress of the settlement negotiations. At that time, the parties informed the Pre-Hearing Officer that they desired to continue with the negotiations. On August 7, 2002, the parties informed the Pre-Hearing Officer that they had reached a settlement agreement that would resolve the outstanding issues in TRA Docket No. 97-00309.

² The terms of the former Directors of the Authority, Chairman Sara Kyle, and Directors H. Lynn Greer, Jr. and Melvin J. Malone, expired on June 30, 2002. Chairman Kyle was reappointed and commenced a new term as a Director of the Authority on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Kyle and Directors Deborah Taylor Tate and Pat Miller was randomly selected and assigned to TRA Docket No. 97-00309. As noted above, the randomly selected three member voting panel in TRA Docket No. 01-00362 is Chairman Kyle and Directors Deborah Taylor Tate and Ron Jones.

August 7, 2002 Authority Conference

During the Authority Conference, which was continued to August 7, 2002, Pre-Hearing Officer Tate informed the panel in TRA Docket No. 97-00309 that the parties had reached a proposed Settlement Agreement (attached hereto as Exhibit A).³ The panel heard from the parties that the Settlement Agreement affected three different dockets, including the 271 docket, TRA Docket No. 01-00362⁴ and TRA Docket No 01-00193.⁵ The parties also informed the panel that a number of the parties to Docket No. 97-00309 had agreed to the Settlement Agreement, and those parties that did not join in the Settlement Agreement had either withdrawn from the proceedings or concurred in the parties' agreement to submit the case to the panel on the current record.

BellSouth summarized the Settlement Agreement as follows. With regard to Docket No. 97-00309, the parties proposed that the record should be closed as of July 31, 2002 and the case be submitted to the Authority for resolution on that record. The parties agreed that no additional testimony, argument, briefs or opposition would be filed in the docket. The parties requested that the TRA publicly deliberate the 271 docket on August 26, 2002.

As to Docket No. 01-00362, the parties agreed that they would ask the TRA to administratively close the docket. In addition, the parties proposed that the closing of the docket would not prevent any party from filing a complaint with the TRA regarding

³ Director Jones sat with the panel in 97-00309 for the purpose of hearing Director Tate's comments and the summary of the Settlement Agreement.

⁴ *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362.

⁵ *Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*, TRA Docket No. 01-00193.

BellSouth's Operational Support System ("OSS").⁶ The parties requested that the TRA provide expedited treatment to such complaints. The parties agreed, however, that no such complaints would be filed prior to the entry of an order by the TRA reflecting the TRA's decision in the 271 docket.

With regard to TRA Docket No. 01-00193, the parties requested that the Authority adopt as the Tennessee Performance Assurance Plan the service quality measurements and self-effectuating enforcement mechanisms adopted by the Florida Public Service Commission on February 14, 2002, as they presently exist and are modified in the future. Under the Settlement Agreement, the Florida plan would be effectuated no later than December 1, 2002. The parties agreed not to seek amendments to the plan until December 1, 2003, after which the TRA in its discretion may conduct a review of the plan and the parties are free to recommend modifications. The parties agreed that in the interim BellSouth may implement the Georgia Performance Plan and self-effectuating enforcement mechanisms. The parties also proposed that the TRA adopt the Tennessee performance measurements for special access that were included as Attachment B to the *Amended Final Order Granting Reconsideration and Clarification and Setting Performance Measurements, Benchmarks and Enforcement Mechanisms* issued on June 28, 2002. The parties agreed that if the Federal Communications Commission ("FCC") implements national standards, no party is estopped from requesting the TRA to supplant the performance standards in Attachment B with the FCC

⁶ "[T]he term OSS refers to the computer systems, databases, and personnel that incumbent carriers rely upon to discharge many internal functions necessary to provide service to their customers." *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, FCC Docket No. 98-72, CC Docket No. 98-56; 13 FCC Rcd. 12,817 (released April 17, 1998) (*Notice of Proposed Rulemaking*) ¶9.

standards.

The parties also agreed that the competitive local exchange carriers ("CLECs") that are parties to TRA Docket No. 97-00309 may request, via the filing of a complaint, that the TRA open a generic contested proceeding to address the provision of BellSouth's DSL service to CLEC voice customers and related OSS issues.⁷ The parties agreed that BellSouth could raise any and all defenses to the CLECs' complaints. BellSouth agreed not to oppose expedited treatment of such complaints.

Finally, the parties agreed that they would not use the fact that the TRA will not conduct further Hearings in TRA Docket No. 97-00309 as a criticism of the TRA's decision on whether or not to recommend that the FCC approve BellSouth's § 271 application.

After BellSouth finished presenting this summary of the Settlement Agreement, BellSouth, Birch Telecom of the South, Inc., Ernest Communications, Inc., ITC DeltaCom, Inc., MCI WorldCom Communications, Inc., and its subsidiaries, MCImetro Access Services, Inc. and Brooks Fiber Communications of Tennessee, Inc., DIECA d/b/a Covad Communications, Inc. and Time Warner Telecom of the MidSouth, LP orally agreed on the record to the terms of the Settlement Agreement. The Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter stated that while said Division was not a signatory, it is supportive of the Settlement Agreement. On the signature pages of the Settlement Agreement, XO Tennessee, Inc., Intermedia Communications, Inc., Southeastern Communications Carriers Association,

⁷ DSL is an acronym for digital subscriber line, a developing technology that uses ordinary copper telephone lines to deliver high-speed information, including audio, video and text.

ICG Telecom Group, Inc., US LEC of Tennessee, Inc. and American Communications Services, Inc. indicated that they had withdrawn from this proceeding. AT&T Communications of the South Central States, KMC Telecom III, Inc. and KMC Telecom IV, Inc. signed a separate document stating that they were not parties to the Settlement Agreement, but agreed that this matter be submitted to the Authority on the current record without further submissions or hearings.

After considering the parties' statements, the panel in TRA Docket No. 97-00309 unanimously voted to approve the Settlement Agreement on the condition that the panels in TRA Docket No. 01-00362 and TRA Docket No. 01-00193 accepted and approved those portions of the Settlement Agreement affecting those respective dockets. Shortly thereafter, the panel in TRA Docket No. 01-00193 convened and unanimously voted to accept the Settlement Agreement.

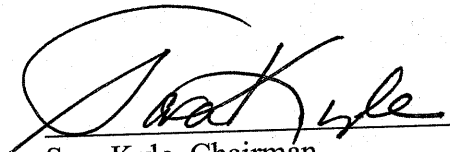
The panel in TRA Docket No. 01-00362 also convened. As a preliminary matter, Chairman Kyle inquired whether the parties objected to waiving the notice requirement to hear this matter. There being no objection, the panel proceeded to consider those portions of the Settlement Agreement that affect this docket. The panel unanimously voted to accept those portions of the Settlement Agreement affecting TRA Docket No. 01-00362 and unanimously voted that TRA Docket No. 01-00362 could be administratively closed after all previously deliberated orders in that docket have been issued.

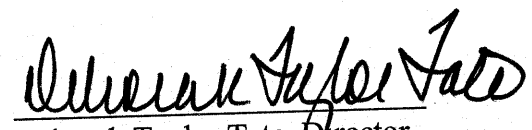
IT IS THEREFORE ORDERED THAT:

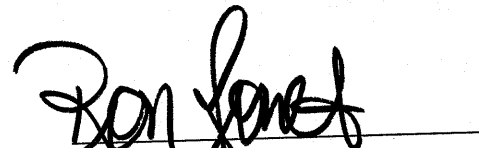
1. Those portions of the Settlement Agreement in TRA Docket No. 97-00309 that affect the issues in TRA Docket No. 01-00362 are accepted and approved.

2. TRA Docket No. 01-00362 shall be administratively closed upon this Order becoming final.

3. Any party aggrieved by this Order may file a Petition for Reconsideration with the Tennessee Regulatory Authority pursuant to Tenn. Comp. R. & Reg 1220-1-2-.20 within fifteen (15) days of the entry of this Order.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Ron Jones, Director

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*

Docket No. 97-00309

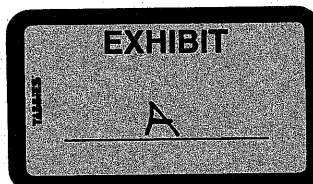
SETTLEMENT AGREEMENT

In Docket No. 97-00309, the undersigned parties and BellSouth agree to the following:

1. The record in Docket No. 97-00309 will be closed as of July 31, 2002. No party will submit any further testimony, documentary evidence, argument, briefs, or opposition in this docket for consideration of the Tennessee Regulatory Authority. All of the parties agree to submit this case to the Directors for consideration and determination on its merits based on the existing record. The parties request that the Authority hold its public deliberations at a

special session on August 26, 2002.

- The parties agree that ~~Docket No. 01-00362 shall remain open for issues related to the performance of BellSouth's operational support systems. This docket from filing a complaint with the TRA regarding BellSouth's OSS and in such case all parties will urge the TRA U.S.C. §271(c). No party shall file any complaint in Docket No. 01-00362 prior to entry of an order by the TRA reflecting the TRA's~~ should be closed but the undersigned parties agree that this will not prevent any party from filing a complaint with the TRA regarding OSS. Such on an expedited basis
2. ~~Docket No. 01-00362 shall remain open for issues related to the performance of BellSouth's operational support systems. This docket from filing a complaint with the TRA regarding BellSouth's OSS and in such case all parties will urge the TRA U.S.C. §271(c). No party shall file any complaint in Docket No. 01-00362 prior to entry of an order by the TRA reflecting the TRA's~~



decision whether or not to recommend approval of BellSouth's 271 application.

3. In resolution of the contested issues in Docket 01-00193, the parties will request the Authority to adopt as the "Tennessee Performance Assurance Plan" the identical service quality measurement plan and self-effectuating enforcement mechanism adopted by the Florida Public Service Commission in Docket No. 000121-TP on February 14, 2002, as it exists today and as it may be modified in the future, plus the Tennessee Performance Measurements for Special Access contained in the Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms issued in this docket on June 28, 2002, as set forth in exhibit B to that order. If the FCC adopts national special access measurements, the parties reserve the right to argue to the TRA as to whether the FCC measures should supercede the Tennessee Measurements. The parties agree that the "Tennessee Performance Assurance Plan" will become effective no later than December 1, 2002. The parties further agree that until the "Tennessee Performance Assurance Plan" is implemented, BellSouth can use, on an interim basis, the "Georgia Performance Plan" approved by the FCC in BellSouth's Georgia/Louisiana 271 application. The parties agree that the "Tennessee Performance Assurance Plan," as defined above, shall continue until at least December 1, 2003, at

which time the Authority at its discretion may conduct a review of the then-existing plan, accept recommendations from interested parties, and make any appropriate modifications.

4. The CLECs may request that the TRA open a generic contested case proceeding to address expeditiously the issue of BellSouth's provision of DSL service to CLEC voice customers and related OSS issues. BellSouth may raise any and all defenses to such complaint. BellSouth will not oppose expedited treatment of such complaint.
5. This agreement is solely for the purpose of settling this docket in Tennessee. Nothing in this agreement restricts the right of any party to take a contrary position in any other forum. The intervening parties and BellSouth agree that the fact that this case was resolved without further hearings will not be used as a basis for opposing BellSouth's Tennessee 271 application at the FCC or for criticizing the TRA's recommendation of BellSouth's 271 application at the FCC. In the event that the TRA declines to act consistently with any portion of this agreement, then the agreement shall be void and shall in no manner be binding upon any party to this agreement.

BELLSOUTH TELECOMMUNICA-
TIONS, INC.

By: [Signature]

Its: General Counsel - TN

XO TENNESSEE, INC.

By: [Signature]

Its: ally

TIME WARNER TELECOM OF THE
MID-SOUTH, LP; NEW SOUTH
COMMUNICATIONS CORP.

By: [Signature]

Its: Attorney

MCI WORLDCOM, INC.; MCI metro
ACCESS TRANSMISSION SERVICES,
LLC; BROOKS FIBER COMMUNI-
CATIONS OF TENNESSEE, INC.

By: [Signature]

Its: Attorney

INTERMEDIA COMMUNICATIONS,
INC.

By: [Signature]

Its: ally

DIECA d/b/a COVAD COMMUNICA-
TIONS COMPANY

By: William H. Weber

Its: VICE PRESIDENT, EXTERNAL AFFAIRS

ICG TELECOM GROUP, INC.

By: [Signature]

Its: _____

SOUTHEASTERN COMPETITIVE
CARRIERS ASSOCIATION

By: [Signature]

Its: ally

SPRINT COMMUNICATIONS, LP

NOT PRESENT
DURING HEARING
DATES

By: _____

Its: _____

QWEST f/k/a LCI INTERNATIONAL
TELECOM CORP.

By: JUST MONITORING

Its: H. AD [Signature]

BELLSOUTH LONG DISTANCE, INC.

KMC TELECOM III, INC.;
KMC TELECOM IV, INC.

NOT PARTY TO AGREEMENT;
SEE STATEMENT IN
RECORD + PAGE 7
OF THIS AGREEMENT

By: Heath Anthony [Signature]

Its: General Counsel

By: _____

Its: H. AD [Signature]

COMMUNICATIONS WORKERS OF
AMERICA

NOT PRESENT DURING
HEARING DATES

By: _____

Its: _____

SBC TELECOM

By: Just monitoring

Its: _____

ASSOCIATION OF COMMUNICA-
TIONS ENTERPRISES

NOT PRESENT
DURING
HEARING DATES

By: _____

Its: _____

ITC^DELTACOM

By: [Signature]

Its: att[Signature]

US LEC OF TENNESSEE, INC.

Withdrawn

By: *Thy Wal*
Its: *attorney*

AMERICAN COMMUNICATIONS
SERVICES, INC.

Withdrawn

By: *Thy Wal*
Its: *attorney*

BIRCH TELECOM OF THE SOUTH,
INC.

By: *Thy Wal*

Its: *attorney*

ERNEST COMMUNICATIONS, INC.

By: *Thy Wal*

Its: *attorney*

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance
(InterLATA) Service in Tennessee Pursuant to Section 271 of
the Telecommunications Act of 1996*

Docket No. 97-00309

AT&T is not a party to this agreement, but AT&T will agree that this matter
may be submitted to the Authority on the current record without further
submissions or hearings.

AGREED TO:

AT&T COMMUNICATIONS OF THE SOUTH
CENTRAL STATES, LLC; TCG MIDSOUTH,
INC.

By: MA [Signature]

Its: Counsel

KMC TELCOM TAKES THE SAME POSITION AS AT&T.

KMC TELCOM III, INC. +

KMC TELCOM IV, INC.

by: H. [Signature]

ITS COUNSEL